

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.Rev.Pet.No. 486 of 1998()

CC.162/1995 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI
CRA.89/1997 of III ADDL.SESIONS COURT, ERNAKULAM
.....

REVN. PETITIONER/2ND APPELLANT/2ND ACCUSED:

ANTONY, S/O.FRANCIS, AGED 42 YEARS,
PARAPPALLIVEETIL, VYPPIN DESOM,
PUTHUVYPPIN.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA, REP. BY THE SUB INSPECTOR
OF POLICE, FORT KOCHI POLICE STATION.
2. PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR MR.SHYSON P.MANGUZHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J.

CrI.R.P.No.486 of 1998

Dated, this the 31st day of January, 2007

ORDER

This revision petition arises out of the judgment in CrI.Appeal No.89 of 1997 on the file of the III Additional Sessions Court, Ernakulam which was filed against the judgment in C.C.No.162 of 1995 on the file of the Judicial First Class Magistrate-I Court, Kochi. The accused persons were charge sheeted for offences punishable under Sections 280, 338 and 34 IPC. The trial court found the accused persons guilty for offence under Section 280 IPC and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.1000/- and in default of payment of fine to undergo simple imprisonment for 15 days more. They were also convicted under Section 338 IPC and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1000/- and in default of payment of fine to undergo simple imprisonment for 15 days more. The above sentences were ordered to run concurrently. On appeal the Sessions Court acquitted the first accused and consequently

the sentence entered against him was set aside, whereas the order of conviction and sentence entered against the revision petitioner (2nd accused) was confirmed. It is against this order that the present revision has been filed.

2. Learned counsel appearing for the revision petitioner submitted that both the courts below committed an error in accepting the evidence of P.W.2 without any corroborative evidence from any other witness and recording conviction against the accused persons. It was also stated that the prosecution has not succeeded in proving negligence on the part of the second accused. The same reasoning should have been adopted in the case of second accused also as was done in the case of first accused.

3. Leaned counsel for the prosecution however finds no error on the reasoning adopted by the appellate court and according to him a right finding was entered against the second accused as the ingredients on his part were clearly established by the evidence of P.w.2 and other corroborative evidence. P.W.5, the doctor, deposed that P.W.2 was hospitalised on 14.1.1995. On further investigation at the hospital the injured

was found to have fracture shaft of great toe, fracture base of 2nd and 3rd toes, fracture neck of right 3rd and 4th metatarsal and metatarso phangeal joints of right 5th toe. P.W.5 opined that the injuries could be caused if the right foot was caught in the nylon rope and lever of the boat so as to crush around. He further opined that it will be difficult for the injured to walk even if cured and he will not be able to run also. The injuries noted by P.W.5 are serious in nature.

4. Counsel for the petitioner prayed for leniency and to assail the findings rendered by the trial court and the appellate court holding him guilty. In my view, the prosecution has fully succeeded in proving the offence against the second accused under Section 338 IPC and nothing has been brought out to take a different view than that of the trial court as well as the appellate court as far as the second accused is concerned. However, considering the entire facts and circumstances of the case and taking note of the age of the second accused this Court feels it appropriate to compensate the injured P.W.2 rather than sending the second accused to jail. In the circumstances, the sentence awarded by the courts below against the petitioner is

modified to that of civil imprisonment for a day till the rising of the Court and also to pay a consolidated amount of Rs.Ten thousand towards compensation to be paid to the injured P.W.2. The amount of Rs.10,000/- would be deposited before the trial court within a period of two months from today failing which the petitioner has to undergo simple imprisonment for a period of two months.

The sentences awarded by the courts below are modified and accordingly the revision petition is disposed of.

**K.S.RADHAKRISHNAN,
Ag. Chief Justice.**

vns